

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2005-000572-001 DT

11/04/2005

HON. MARGARET H. DOWNIE

CLERK OF THE COURT
L. Rasmussen
Deputy

FILED: 11/08/2005

STATE OF ARIZONA

JAMES D NEUGEBAUER

v.

BRANDON KOHN AZADEGAN (001)

CHARLES P FRANKLIN

REMAND DESK-LCA-CCC
SCOTTSDALE CITY COURT

REMAND FOR DISMISSAL

Lower Court Case No. PR200515828

The court has jurisdiction over this appeal pursuant to the Arizona Constitution, Article VI, Section 16, and A.R.S. § 12-124(A). The court has considered the record of the proceedings from the trial court, exhibits made of record, and the memoranda submitted.

On March 12, 2005, photo radar equipment photographed a vehicle owned by Appellant Brandon Kohn Azadegan traveling at a speed of sixty-two (62) mph in a zone marked forty-five (45) mph, in violation of A.R.S. § 28-701(A) (speed not reasonable and prudent). The Scottsdale City Court held a trial on May 24, 2005, and Appellant was found responsible for the charge. Appellant thereafter filed a timely notice of appeal.

Appellant challenges the sufficiency of the evidence in the court below. Specifically, he contends that he was not the driver of the vehicle and that the driver shown in the photo radar picture is not him.

When reviewing the sufficiency of the evidence, an appellate court does not re-weigh the evidence to determine if it would reach the same conclusion as the original trier of fact.¹ All

¹ *State v. Guerra*, 161 Ariz. 289, 778 P.2d 1185 (1989); *State v. Mincey*, 141 Ariz. 425, 687 P.2d 1180, cert. denied, 469 U.S. 1040, 105 S.Ct. 521, 83 L.Ed.2d 409 (1984); *State v. Brown*, 125 Ariz. 160, 608

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evidence is viewed in a light most favorable to sustaining the judgment, and all reasonable inferences are resolved against the Appellant.² When the sufficiency of evidence to support a judgment is questioned, an appellate court examines the record only to determine whether substantial evidence exists to support the action of the lower court.³

An appellate court affords great weight to the trial court's assessment of witnesses' credibility. From a review of the record, it is clear that the trial judge questioned Appellant's claim that his vehicle had been stolen prior to the date in question and that he was not the driver. On the other hand, the photo radar photos are of such poor quality that they are virtually worthless. The driver's face is not visible, and the grainy, dark quality of the photos does not allow for identification of the man driving with any degree of probability. The trial judge himself recognized the poor quality of the photos, stating:

Frankly, the picture is not a particularly high quality, **but I certainly can't tell that it's not you.** It's obviously a male Caucasian, um, I would say approximately the same age as you. I can't tell any difference in the build from you. I will grant you that it is not a very good picture.

Later in the proceedings, the trial judge stated:

[T]he court is not able to tell the age of the person driving. The person driving is a Caucasian male and **as far as the court can ascertain could just as easily be the defendant as not be the defendant.**

[emphasis added]

After a careful review of the record, this court finds that there was not substantial evidence establishing that Appellant was the driver of the vehicle on the date in question.

IT IS ORDERED reversing the finding of responsibility and fines imposed by the Scottsdale City Court.

IT IS FURTHER ORDERED remanding this matter to the Scottsdale City Court with instructions to dismiss the citation against Appellant and refund any fines or bonds posted.

P.2d 299 (1980); *Hollis v. Industrial Commission*, 94 Ariz. 113, 382 P.2d 226 (1963).

² *Guerra*, supra; *State v. Tison*, 129 Ariz. 546, 633 P.2d 355 (1981), cert. denied, 459 U.S. 882, 103 S.Ct. 180, 74 L.Ed.2d 147 (1982).

³ *Hutcherson v. City of Phoenix*, 192 Ariz. 51, 961 P.2d 449 (1998); *State v. Guerra*, supra; *State ex rel. Herman v. Schaffer*, 110 Ariz. 91, 515 P.2d 593 (1973).